

**STATE OF RHODE ISLAND  
DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES**

**PUBLIC NOTICE OF PROPOSED RULE-MAKING**

In accordance with Rhode Island General Law (RIGL) 42-35 and 42-72-5, notice is hereby given that the Department of Children, Youth and Families proposes to amend the following DCYF rule:

**EDUCATIONAL SURROGATE PARENT REFERRAL**

This amended rule, in compliance with good child welfare and educational practice, the federal court order relating to RI Training School residents and the accreditation standards of the American Correctional Association for Juvenile Training Schools and Juvenile Detention Facilities, identifies procedures for securing an educational surrogate parent for eligible children and youth.

In the amendment of this rule, consideration was given to the following: (1) alternative approaches and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

This amended rule is accessible on the R.I. Secretary of State's website (<http://www.sec.state.ri.us/ProposedRules/>) and the DCYF website (<http://www.dcyf.ri.gov>) or available in hard copy upon request (401-528-3685). Interested persons should submit data, views or written comments by January 23, 2011 to Susan Bowler, Administrator for Families and Children, Department of Children, Youth and Families, 101 Friendship Street, Providence, RI 02903 ([Susan.Bowler@dcyf.ri.gov](mailto:Susan.Bowler@dcyf.ri.gov)).

In accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

# Educational Surrogate Parent Referral

Rhode Island Department of Children, Youth and Families

**Policy: 700.0000**

**Effective Date:** August 1, 1984 **Revised Date:** January 22, 2002 **Version** 54

The Department of Children, Youth, and Families (DCYF) supports educational programming to meet the needs of any child with a disability in the care of DCYF. The Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities defines a child with a disability as "a child, aged 3 to 21, evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism spectrum disorder, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services."

If a parent of a child in the care or custody of DCYF with a disability or suspected of having a disability is unable or unwilling to ensure that the needs of that child are met, DCYF seeks appointment of an educational surrogate parent through the Department of Elementary and Secondary Education (RIDE). The educational surrogate parent represents the child in educational matters and advocates for the child's educational needs. For children in the care and/or custody of DCYF, the educational surrogate parent participates in the educational component of the DCYF service plan review. Only the educational surrogate parent is authorized to sign the Individualized Education Plan (IEP) in place of the natural parent. DCYF staff are not authorized to sign the IEP in the place of the parent or guardian.

~~The Department of Children, Youth, and Families (DCYF) recognizes the need to adhere to an educational program which meets the special needs of any child with a disability in the care of DCYF. Sometimes the parent is unable or unwilling to ensure that these educational needs are being met. In such cases, DCYF bears the primary responsibility of identifying and referring children with a disability or children suspected of having a disability to the Department of Education (DOE) for the appointment of an Educational Surrogate Parent. The Educational Surrogate Parent represents the child in all educational matters and advocates for the child's educational needs. For a child in the care and/or custody of DCYF, no DCYF staff person shall at any time sign the child's Individualized Educational Program (IEP). Under federal regulations, only the Educational Surrogate Parent is authorized to sign the IEP in place of the natural parent. For children in the care and/or custody of DCYF, the Educational Surrogate Parent is allowed to participate in the educational component of the Service Plan Review. DCYF is responsible for providing a process of identification of children with disabilities or children suspected of having disabilities, as defined by the RI Board for Elementary and Secondary Education Regulations Governing the Education of Children with Disabilities, when these children are in the care of DCYF. The Regulations Governing the Education of Children with Disabilities defines a child with a disability as:~~

~~—————"Child with a disability means a child aged three to 21, evaluated in accordance 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, spectrum disorder, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services."~~

~~In most cases, an educational surrogate parent is appointed by the Department of Education for all children with disabilities who are placed in DCYF care under temporary or permanent custody on the basis of a petition alleging dependency, neglect, and/or abuse. This appointment is mandated by a Federal District Court decree, is controlled through state departmental interagency agreements, and complies with federal statutes and rules and State Board of Regents regulations. In contracts for voluntary placement of disabled children and for disabled children placed in DCYF custody for placement on the basis of a Wayward/Delinquent petition, an educational surrogate parent may be appointed in specific circumstances as stated in the procedures below.~~

**Related Procedures**

~~Appointment of an Educational Surrogate Parent for Children with Disabilities~~

~~Educational Surrogate Parent Referral Identification~~

~~Educational Surrogate Parent Referral Process – Based Upon Legal Status~~

~~Educational Surrogate Parent Referral – Confirmation and Monitoring of Educational Surrogate Parent Appointment~~

**Related Procedures**

**Educational Surrogate Parent Referral**

**Related Policy**

**Guardianship for Education**

**Comprehensive Assessment and Service Planning**

## **Educational Surrogate Parent Referral**

### **Procedure from Policy 700.0000: Educational Surrogate Parent Referral**

- A. The Family Court enters an order indicating whether the parents or the Department of Children Youth and Families (DCYF) makes educational decisions for a child in the care and custody of the state.
1. For children who do not have or are not suspected of having a disability, the primary worker ensures that educational services are provided in accordance with DCYF Policy 700.0115, Guardianship for Education.
  2. If the Family Court vests control of a child's education with DCYF, and if the court or DCYF finds that the child has or is suspected of having a disability, the court or DCYF requests the appointment of an educational surrogate parent. The Education Information Sheet (DCYF# 061) with attached documentation of the court decision is submitted by the DCYF primary worker to the DCYF educational surrogate referral staff for processing by the RI Department of Elementary and Secondary Education (RIDE).
- B. In the absence of a Family Court order, for children ages 30 months to 21 years identified as or suspected of having a disability:
1. If DCYF has temporary or permanent custody of a child with a disability or suspected of having a disability through a petition of abuse, neglect and/or dependency:
    - a. For children placed outside the home on an abuse/neglect petition, RIDE appoints an educational surrogate parent unless DCYF strongly recommends that the parent(s) continues to make educational decisions.
    - b. For children placed outside the home on a dependency petition, RIDE notifies the parent(s) that an educational surrogate parent will be appointed unless the parent(s) expresses a desire to remain involved within 10 (ten) days of the date of the letter.
    - c. When a child in the custody of DCYF pursuant to a petition for dependency, neglect, or abuse is placed with his/her natural parent(s), the primary worker notifies RIDE through the DCYF educational surrogate referral staff using the DCYF #061.
      - i. RIDE advises the parent(s) that he/she retains rights to make educational decisions.
      - ii. RIDE sends information on training and educational advocacy to the parents.
      - iii. If the parent(s) subsequently fails to be involved in the child's education, DCYF documents lack of involvement and requests an educational surrogate parent appointment. Lack of involvement may be demonstrated by a pattern of behavior including not participating in educational planning for the child.
  2. If a child with a disability or suspected of having a disability is placed with DCYF voluntarily:
    - a. The primary worker, at the time of signature by the parent(s), asks the parent(s) if he/she will continue to make educational decisions.
    - b. The primary worker indicates the decision of the parent(s) on the Voluntary Application/Authorization/Consent for Placement of Children (DCYF# 023) in compliance with DCYF Policy 700.0015, Voluntary Placement.
    - c. If the parent(s) continues to make educational decisions, no referral for an educational surrogate parent is necessary.
    - d. If the parent(s) does not wish to continue to make educational decisions, the primary worker secures a signed DCYF #062 and attaches it to the DCYF #023, in accordance with DCYF Policy 700.0015, Voluntary Placement. The primary worker ensures that the parent(s) understands that signing the DCYF #062 precludes further parental decision making in educational matters.

- e. The primary worker forwards a copy of the DCYF# 062 and the DCYF #061 to the **DCYF educational surrogate referral staff** for processing by RIDE.
- 3. Wayward/Delinquent Petition
  - a. If DCYF has temporary or permanent custody on a wayward/delinquent petition and the child is placed with the parent(s), the child is not eligible for an **educational surrogate parent**.
  - b. Except as provided in paragraph B 4, if the child is placed outside the home on a wayward/delinquent petition:
    - i. The parent(s) are invited to participate in **service planning**. If the parent(s) participates, no referral for an **educational surrogate parent** is made.
    - ii. If the parent does not participate in **service planning** and/or educational planning for the child, a referral for an **educational surrogate parent** is made with documentation of lack of parental involvement. RIDE notifies the parent(s) that an **educational surrogate parent** will be appointed unless the parent(s) expresses a desire to remain involved within 10 (ten) days of the date of the letter.
    - iii. If the parent(s), once active, subsequently ceases to be involved in decisions regarding the child's education, DCYF informs RIDE and requests an **educational surrogate parent**.
- 4. The RI Training School
  - a. A referral for an **educational surrogate parent** is mandatory for a youth sentenced to the Training School when:
    - i. The child continues to be under the temporary or permanent custody of the DCYF based on a dependency, neglect, and/ or abuse petition and control of the child's education has been vested with the Department.
    - ii. A child's parental rights are terminated and the Department serves as guardian or a child's parents/guardians are not known or their whereabouts cannot be determined.
  - b. Except as provided in paragraph B, when a child is sentenced to the Training School and is determined to have a disability or suspected of having a disability, referral for an **educational surrogate parent** is contingent on the willingness of the parent/guardian to be responsible for decisions regarding the child's education.
  - c. A determination of the willingness of the **parent/guardian** to participate in educational planning is made at or before the resident's IEP Meeting.
    - i. If the parent/guardian states he/she will continue in this role, he/she may do so.
    - ii. If the parent/guardian expresses or demonstrates an unwillingness to participate in educational planning, the Guidance Counselor secures a signed DCYF #062. Unwillingness to participate may be demonstrated by a pattern of behavior including not participating in treatment and educational planning for the resident.
- C. Identification of children with disabilities or children suspected of having a disability (described in paragraphs A and B above) is completed by the primary worker:
  - 1. Within the RI Training School, the primary worker is identified by the Director of Special Education Services for the Education Program.
  - 2. In conformance with DCYF Policy 700.0075, Comprehensive Assessment and Service Planning and within the time frame of the formulation of the **DCYF #032, Service Plan** and before any IEP Meeting.
  - 3. For children with disabilities or children suspected of having a disability who are active with the Department functioning under an existing **service plan** and who are now being placed out of the parental home, identification is made within thirty (30) days of the child's change in legal/placement status.
  - 4. The primary worker completes an Authorization to Obtain Confidential Information (DCYF#007B) and an Authorization to Release Confidential Information (DCYF#007A)

- and makes every effort to secure educational records and evaluation material to aid in the identification of a child's disability.
5. If a disability is suspected, the primary worker refers the child for intervention in cooperation with the local school system according to state and federal law.
  6. A referral for an educational surrogate parent for a child who meets the criteria defined in the procedures below is made by submitting the DCYF #061 to the DCYF educational surrogate referral staff. An educational surrogate parent has to be appointed in order to authorize testing.
  7. Copies of court documents and/or a signed DCYF #062 are included with the DCYF #061.
  8. Information regarding the referral and appointment of an educational surrogate parent must be entered by the primary worker in the educational record in RICHIST.
- D. The DCYF educational surrogate referral staff requests the appointment of the educational surrogate parent of RIDE within five (5) working days. The Department of Education notifies the DCYF educational surrogate referral staff and the primary worker when an appointment is made.
1. Once appointed, the educational surrogate parent has the right to:
    - a. Meet the child/youth.
    - b. Meet residential and educational staff to assess the progress of child/youth.
    - c. Review the educational records of child/youth.
    - d. Participate in development and approval of the IEP.
    - e. Receive grades and educational progress reports.
    - f. Participate in educational matters relating to any change in the child/youth's educational programming and discharge planning.
  2. All subsequent changes which affect the continued services of the educational surrogate parent are reported by means of the DCYF #061 within five (5) working days to the DCYF educational surrogate referral staff, who notifies RIDE.
  3. If an educational surrogate parent is appointed, that individual continues in this role, regardless of changes in placement, as long as the child meets any of the eligibility standards in paragraph B.
- E. If the primary worker has not received confirmation of the appointment of an educational surrogate parent within 21 days of referral, he/she contacts the DCYF educational surrogate referral staff.
1. The DCYF educational surrogate referral staff contacts RIDE to check on the status of the referral. If the referral has been denied, he or she requests a reason for the denial.
  2. The DCYF educational surrogate referral staff keeps a record of all referrals for educational surrogate parent, the date of the referral and the reason for the denial of any appointments by RIDE.
- F. RIDE monitors the performance of educational surrogate parents. DCYF assists by informing RIDE if an issue of concern arises with representation provided by an educational surrogate parent.
1. The primary worker informs the DCYF educational surrogate referral staff.
  2. The DCYF educational surrogate referral staff contacts RIDE in writing outlining the issues and requests a written response outlining a plan for intervention.

#### Appointment of an Educational Surrogate Parent for Children with Disabilities

##### Procedure From Policy 700.0000: Educational Surrogate Parent Referral

A. RIGL 33-15-1.2—Guardianship for education—Educational surrogate parents for children with disabilities under the care and custody of the State. Whenever the Family Court places a child in the care and custody of the state, it shall enter an order indicating whether the parents or guardian are to be allowed to continue to make educational decisions on behalf of said child. At the same time, the Family Court shall make a factual determination pursuant to Section 16-64-1.2(a) as to the said residence of the child's parent(s) or guardian on the date that the child is placed in the care and custody of the state, in accordance with RIGL 33-15-1.2.

~~B. If the Family Court enters an order vesting the right to control a child's education with a state agency, and if the court or the state agency finds that the child is in need of special education, or that the child is suspected of being in need of special education, the court or state agency shall request the commissioner of education to appoint an educational surrogate parent to exercise the child's due process rights under applicable state and federal special education laws and regulations.~~

#### ~~Educational Surrogate Parent Referral—Identification~~

##### ~~Procedure From Policy 700.0000: Educational Surrogate Parent Referral~~

~~A. Identification of children with disabilities or children suspected of having a disability is completed by the primary service worker within the time frame of the formulation of the initial Service Plan/Agreement (DCYF #032). (Please refer to Policy 500.0075 Service Plan/Agreement.)~~

~~B. For children with disabilities or children suspected of having a disability who are active with the Department functioning under an existing Service Plan/Agreement and who are now being placed out of the parental home, identification is made within thirty (30) days of the child's change in legal/placement status.~~

~~C. Identification necessitates that the primary service worker immediately obtain an Authorization to Obtain or Release Confidential Information (DCYF#007) and make every effort to:~~

~~1. Secure school department records and evaluation material which will aid in the identification of a child with a disability. This material includes but is not limited to achievement testing, psychological testing, academic records, and the IEP.~~

~~2. Secure any other pertinent data from the school department and/or other private and public agencies which can be used for identification purposes. This includes but is not limited to medical records, mental health records, and social behavioral profiles.~~

~~3. If the disability is suspected but not confirmed, refer the child for evaluation and/or testing to the local school system in which the child is enrolled. A referral for an educational surrogate parent for those children who meet the criteria defined in the procedures below should be made by submitting the Education Information Sheet (DCYF #061) to the Educational Services Coordinator. For those children, an educational surrogate parent has to be appointed in order to authorize testing.~~

~~D. Information regarding the referral and appointment of an educational surrogate parent must be entered by the primary service worker in the educational record in RICHIST.~~

#### ~~Educational Surrogate Parent Process—Based Upon Legal Status~~

##### ~~Procedure From Policy 700.0000: Educational Surrogate Parent Referral~~

~~A. If the Family Court enters an order under RIGL 33-15-1.1 vesting educational decision making with DCYF, and the child is identified as having a disability or suspected of having a disability, DCYF must make a referral for an educational surrogate parent to the DOE. The Education Information Sheet (DCYF# 061) with attached documentation of the court decision should be submitted to the Educational Services Coordinator for processing to DOE.~~

~~B. In the absence of a Family Court order pursuant to RIGL 33-15-1.1, the following conditions apply for children ages 30 months to 21 years identified or suspected of having a disability.~~

~~1. Abuse/Neglect/Dependency Petition – If DCYF has temporary or permanent custody on a petition of abuse, neglect and/or dependency, the Education Information Sheet (DCYF#061) should be submitted to the Educational Services Coordinator for processing to DOE.~~

~~a. For children placed outside the home on an abuse/neglect petition, the DOE will appoint an educational surrogate parent unless DCYF strongly recommends that parent(s) continues to make educational decisions.~~

~~b. For children placed outside the home on a dependency petition, DOE will notify the parent(s) that an educational surrogate parent will be appointed unless the parent(s) expresses a desire to remain involved within ten days.~~

~~c. When a child is in the custody of DCYF pursuant to a petition for dependency, neglect, or abuse, and said child is placed with his or her natural parent(s), DCYF shall so notify DOE via the Educational Services Coordinator and DCYF #061. DOE shall then advise the parent(s) that he/she retains rights to make educational decisions. DOE will send information on training and educational advocacy. If the~~

parent(s) subsequently fails to be involved in the child's education, DCYF can document lack of involvement, and request an educational surrogate parent appointment.

2. ~~Wayward/Delinquent Petition~~

a. ~~If DCYF has temporary or permanent custody on a wayward/delinquent petition and the child is placed with the parent(s), the child is not eligible for the appointment of an educational surrogate parent.~~

b. ~~If the child is placed outside the home on a wayward/delinquent petition, the parent(s) should be invited to participate in Service Planning. If the parent(s) participates, no referral is made. If the parent fails to participate in Service Planning and/or educational planning for the child, a referral for an educational surrogate parent should be submitted documenting lack of parental involvement. Additionally, DCYF shall inform DOE if the parent(s) once active, subsequently ceases to be involved in decisions regarding the child's education, and, in such case, DCYF shall request that an educational surrogate parent be appointed for the child.~~

c. ~~If the child is placed at the Rhode Island Training School, the parent(s) should be invited to the individual treatment plan (ITP) process. If the parent fails to participate, a referral for an educational surrogate parent should be submitted. If a child with a disability is already active with the Department upon his/her admission to the Training School and already has an assigned educational surrogate parent, that individual shall continue in this role while the child is in residence.~~

3. ~~Voluntary Placements~~ – If a child with a disability or who is suspected of having a disability is being placed with DCYF voluntarily, the primary service worker will, at the time of signature by the parent(s), ask the parent(s) if he/she will continue to make educational decisions for the child and so indicate that decision on the Voluntary Application/ Authorization/Consent for Placement of Children (DCYF# 023).

a. ~~If the parent(s) indicates he/she wishes to continue to make educational decisions, it is his/her right. No referral for an educational surrogate parent is necessary.~~

b. ~~If the parent(s) indicates he/she does not wish to continue to make educational decisions, the primary service worker will get a signed Educational Participation Agreement (DCYF#062) and attach it to the Voluntary Application/Authorization/ Consent for Placement of Children (DCYF#023). (Please refer to Policy 700.0015 – Voluntary Placement.)~~

c. ~~The primary service worker will follow the procedures for referral for educational surrogate parent as outlined above and attach a copy of the Educational Participation Agreement (DCYF# 062) to the Educational Information Sheet (DCYF #061).~~

~~Educational Surrogate Parent Referral – Confirmation and Monitoring of Educational Surrogate Parent Appointment~~

~~Procedure From Policy 700.0000: Educational Surrogate Parent~~

A. ~~If the primary service worker has generated a referral for an educational surrogate parent and he/she has not received confirmation of an appointment within 21 days from referral, the worker shall contact the DCYF Educational Services Coordinator to check on the status of the appointment:~~

1. ~~The DCYF Educational Services Coordinator shall contact the DOE to check on the status of the referral. If the referral has been denied, the reason for the denial shall be requested by the Educational Services Coordinator.~~

2. ~~The DCYF Educational Services Coordinator shall keep a record (DCYF #141) of all referrals for educational surrogate parent, the date of the referral, and the stated reason for the denial of any appointments by the DOE.~~

B. ~~The DOE has responsibility to monitor the performance of educational surrogate parents as to the quality of representation. It is, however, the responsibility of DCYF to assist in this process by informing the DOE if a problem arises with the level of representation provided by an educational surrogate parent:~~

1. ~~The primary service worker shall contact the DCYF Educational Services Coordinator to inform him/her of the problem.~~

2. ~~The Educational Services Coordinator shall contact the DOE in writing outlining the issues and requesting a written response from DOE outlining its plan for intervention.~~